IN THE COUNTY COURT OF VICTORIA
AT MELBOURNE
CRIMINAL DIVISION
GENERAL LIST

Revised
Not Restricted
Suitable for Publication

Case No. CR-22-01871
Indictment No. N10885679

DIRECTOR OF PUBLIC PROSECUTIONS

v

MOHAMMAD ATEF GHAFFARI

JUDGE:	HIS HONOUR JUDGE PARRISH
WHERE HELD:	Melbourne
DATE OF PLEA HEARING:	16 May 2023, 14 July 2023 and 20 October 2023
DATE OF SENTENCE:	22 November 2023
CASE MAY BE CITED AS:	DPP v Ghaffari
MEDIUM NEUTRAL CITATION:	[2023] VCC 2203

REASONS FOR SENTENCE

Subject:	CRIMINAL LAW
Catchwords:	Two charges of obtaining a financial advantage by deception – rolled up charges – pleas of guilty – defendant claiming that he has assisted and is willing to assist the authorities – delay – *Verdins'* Principles 5 and 6
Legislation Cited:	*Crimes Act* 1958, s82(1); *Sentencing Act* 1991
Cases Cited:	Cay v R (2010) 29 VR 560; *R v Verdins; R v Buckley; R v Vo* (2007) 16 VR 269; *Worboyes v R* [2021] VSCA 169; *Tones v R* [2017] VSCA 118; *R v Nikodjevic* [2004] VSCA 222; *R v Merrett, Piggott & Ferrari* (2007) 14 VR 392; *Director of Public Prosecutions (DPP) v Bulfin* [1998] 4 VR 114; *Dyason v R* [2015] VSCA 120; *Director of Public Prosecutions* (*DPP (Cth) v Gregory* (2011) 34 VR 1; *Mao v R* [2022] VSCA 211; *Haamid (A Pseudonym) v R* [2018] VSCA 330; *Ooi v R* [2018] VSCA 78; *R v Cartwright (*1989) 17 NSWLR 243; *R v Johnston* (2008) 186 A Crim R 345; *DPP v Cooper* [2018] VSCA 21; *Collins (a Pseudonym) v R* [2018] VSCA 131; *R v Su*, *Katsuno, Asami and Honda* [1997] 1 VR 1; *R v Golding & Golding* (1980) 24 SASR 161; *Cottee v R* [2010] VSCA 285; *R v Freeman* (2001) 120 A Crim R 398; *Director of Public Prosecutions (DPP) v Nazari* [2010] VSCA 293; *R v Duncan* [1998] 3 VR 208; *McGookin & Robinson v R* (1986) 20 A Crim R 438
Sentence:	

APPEARANCES:	Counsel	Solicitors
For the DPP	Ms D Guesdon	Office of Public Prosecutions
For the Offender	Mr I Crisp	Vassis & Co

HIS HONOUR:

1 On 16 May 2023, you pleaded guilty to the following charges on Indictment No. N10885679:

(a) **Charge 1** – that you, at Dandenong in Victoria between 7 February 2019 and 3 September 2019, dishonestly obtained for other persons a financial advantage, namely credit-card facilities in the total sum of $53,000, as set out in Schedule A, by deception, namely by falsely representing that the individuals named in the Schedule A were permanent residents of Australia and thus eligible candidates for credit-card facilities.

Schedule A – Credit-Card Facilities

Dates of Offending	Person for whom the credit card facility was obtained	Quantum
07/02/2019 - 19/09/19	[redacted]	$2,500.00
22/2/2019 – 23/2/2019	[redacted]	$4,000.00
17/4/2019 - 13/5/2019	[redacted]	$7,500.00
23/4/2019 – 16/7/2019	[redacted]	$15,000.00
29/5/2019 – 31/5/2019	[redacted]	$4,000.00
18/7/2019 - 15/8/2019	[redacted]	$5,000.00
30/7/2019 - 6/9/2019	[redacted]	$7,500.00
2/9/2019 – 3/9/2019	[redacted]	$7,500.00
	(b) **TOTAL:** (c)	(d) (e) **$ 53,000.00**

(f) **Charge 2** – that you, at Dandenong in Victoria between the 7 February

2019 and 23 September 2019, dishonestly obtained for other persons a financial advantage, namely personal loans in the total sum of $991,250 as set out in Schedule B, by deception, namely by falsely representing that the individuals named in Schedule B were permanent residents of Australia and thus eligible candidates for personal loans.

Schedule B – Personal Loans

Date of Offending	Person for whom the personal loan was obtained	Quantum
7/2/2019 – 8/2/2019	[redacted]	$17,150.00
22/2/2019 – 27/3/2019	[redacted]	$35,150.00
9/3/2019 – 11/6/2019	[redacted]	$5,150.00
14/3/2019	[redacted]	$35,150.00
8/4/2019	[redacted]	$10,150.00
8/4/2019	[redacted]	$15,150.00
17/4/2019	[redacted]	$20,150.00
18/4/2019 -23/4/2019	[redacted]	$10,150.00
23/04/2019 - 11/7/2019	[redacted]	$20,150.00
28/5/2019	[redacted]	$20,150.00
5/7/2019 – 9/7/2019	[redacted]	$25,150.00
9/7/2019	[redacted]	$40,150.00
9/7/2019	[redacted]	$15,150.00
18/7/2019 - 19/7/2019	[redacted]	$30,150.00
26/7/2019	[redacted]	$20,150.00
29/07/2019 - 30/07/2019	[redacted]	$35,150.00
29/7/2019 - 2/12/2019	[redacted]	$12,150.00
29/7/2019	[redacted]	$20,150.00
29/7/2019	[redacted]	$10,150.00
30/7/2019	[redacted]	$30,150.00
30/7/2019	[redacted]	$40,150.00
31/7/2019 - 1/8/2019	[redacted]	$17,150.00
6/8/2019-7/8/2019	[redacted]	$15,150.00

7/8/2019	[redacted]	$45,150.00
9/8/2019	[redacted]	$35,150.00
13/8/19 - 14/8/2019	[redacted]	$40,150.00
21/8/2019	[redacted]	$50,150.00
21/8/2019 - 22/8/2019	[redacted]	$50,150.00
26/8/2019	[redacted]	$35,150.00
26/8/2019	[redacted]	$35,150.00
30/8/2019	[redacted]	$50,150.00
2/9/2019	[redacted]	$25,150.00
3/9/2019	[redacted]	$45,150.00
4/9/2019	[redacted]	$50,150.00
23/9/2019	[redacted]	$30,150.00
	TOTAL:	(g) **$ 991,250.00**

2 The offence of obtaining a financial advantage by deception for other persons is contrary to s82(1) of the *Crimes Act* 1958 and carries a maximum penalty of ten years' imprisonment.

3 In response to a query from the Court, counsel for the prosecution submitted that the Continuing Criminal Enterprise provisions of the *Sentencing Act* 1991[1] have no application in the circumstances of this matter. Reference was made to the Victorian Court of Appeal decision of *Cay v R*.[2] I accept such submission.

4 Charges 1 and 2 are rolled-up charges, which means each charge is a collection of identifiable charges bundled together in a single charge of the same type on a specified, or over a specified, period. Rolled-up charges also require your agreement and are only for the purpose of a guilty plea. A rolled-up charge

[1] See Part 2B – Continuing Criminal Enterprise Offenders – ss6G-6J of the *Sentencing Act* 1991.
[2] (2010) 29 VR 560 at paragraph [32] and [34]

simplifies the task of the sentencing court and works to your benefit by allowing multiple instances of similar offending to be dealt with in a single charge, rather than through numerous separate charges.

5 When sentencing on a rolled-up charge, the Court must consider all the circumstances of the offence and the offender, including if the offending was carried over an extended period, victimised people, and the totality of harm described in the charge.

6 While the Court may consider all the relevant circumstances of a rolled-up charge, the plea must still be treated as presenting a single formal charge and, accordingly, the maximum penalty is limited to the maximum for any single charge.

The circumstances of the offending

7 Counsel for prosecution tendered a document headed "Summary of Prosecution Opening for Plea" dated 19 April 2023 (see exhibit 1). I was informed by your counsel that the circumstances outlined in such document were accepted.

8 I will not repeat all the contents of such document, but highlight the following important matters:

- You were born in November 1993 and are presently thirty years old. At the time of the subject offending you were twenty-five years old.
- You were initially employed as a customer service representative (teller) at the Commonwealth Bank, [redacted] branch in 2014. Two years later, you were promoted to a customer service specialist (taking care of customer needs, new accounts, credit cards and loan applications).
- You were a member of a syndicate that organised personal loans and credit-card facilities to customers that were ineligible due to their non-

resident visa status. The customers were primarily Malaysian nationals on bridging visas.

- Co-offenders, Jeeven Sandasamy ("Sandasamy"), Veeranani Samiayya ("Samiayya") and Ramachandran Veloo Kachiyappen ("Kachiyappen") acted as brokers for their customers, introducing them to you at the bank. You fraudulently altered the customer profiles of these customers to state that they were permanent residents of Australia so they were able to obtain personal loans and/or credit cards.

- The Commonwealth Bank [redacted] branch policy states that customers eligible for personal loans and credit cards must be a resident in Australia and be either:

  - An Australian citizen or permanent resident (permanent visa subclass holder);

  - A New Zealand citizen;

  - An eligible non-resident visa holder.

- If a person becomes a permanent resident, their correct visa must be sighted and an image copied to their profile.

- Ineligible visa types for personal loans include:

  - bridging visas (subclass 010, 020, 030, 040, 041, 050, 051);

  - student visa (subclass 407-500);

  - safe haven visa (subclass 790);

  - graduate visa (subclass 485).

- Ineligible visa types for a credit card include non-permanent residents on bridging visas or working holiday visas.

- In 2019, the Commonwealth Bank commenced an internal investigation and identified a number of suspicious fraudulent loan and credit-card applications involving you. Your employment was terminated on 13 December 2019, following this investigation. The Commonwealth Bank referred that matter to Victoria Police in January 2020 and the Financial Crime Squad commenced Operation FES–CADISH–2020.

- On 22 July 2021, police executed a search warrant at your home and you were arrested and taken to the Cranbourne Police Station for interview. You participated in a recorded interview under caution and:

  - Denied the offending (Record of Interview, Depositions page 3922-4040).

  - You stated that you did not recall the process for changing a customer's residency status, but you had done so., and you had required proof (Question ("Q") 31-34).

  - For each customer put to you, you could not recall them specifically, and said that you did not receive any money from the loan proceeds.

  - You stated everything was checked by your manager (Q90).

  - You did have weekly/monthly/annual targets for funding loans (Q113).

  - You did not remember asking for $1,500 from [redacted] (one of the people seeking a credit-card facility) (Q554-562).[3]

  - You denied knowing or having any involvement with Sandasamy, Samiayya or Kachiyappen (Q53-56).

- A forensic accountant was not able to identify money paid into either of your two personal National Australia Bank ("NAB") bank accounts by co-

[3] This question arose from information given by [redacted] to the police investigations and set out in the affidavit of the informant, sworn 23 June 2023 (exhibit 3) at paragraph [18] of such affidavit.

offenders or any of the identified customers. However, it was noted that the amount of cash withdrawals from your accounts were substantially less during the period of offending than either pre or post your offending.

- Your co-accused, Sandasamy (a Malaysian national) and Samiayya (an Indian national) returned to their countries of origin before they could be arrested. Kachiyappen was arrested, but ultimately was not charged due to insufficient evidence. Other syndicate members have not been identified.

9 You were charged with the subject offences (with other offences) on 19 April 2022.

10 You have no prior convictions and there has been no pre-sentence detention.

11 You indicated that you would plead guilty at a committal mention stage and the prosecution has accepted that such a plea can be "characterised as a plea at the earliest opportunity".

12 I refer to exhibit 1 – the Summary of Prosecution Opening for Plea, dated 19 April 2023 – which also contains the circumstances of each "customer" who obtained a personal loan or credit-card facility through your fraudulent activities. In particular, it is also noted the various losses that the Commonwealth Bank of Australia has suffered by way of unpaid and written-off loans and credit-card debts in relation to some of the customers. Counsel for the Prosecution submitted that such losses amounted to $602,921.89.

Chronology

13 I refer to a further document tendered by counsel for the prosecution entitled "Submissions and Chronology", dated 20 October 2023 (exhibit 4). In that document, counsel for the prosecution has set out a chronology leading up to the most recent plea hearing on 20 October 2023. I set out the chronology hereunder:

14 **DATE**	15 **EVENT**
16 7 February-23 September 2019	17 Period of offending
18 July – October 2019	19 CBA investigation into Ghaffari
20 3 October 2019	21 Ghaffari interviewed by CBA
22 21 October 2019	CBA complete request for VicPol to investigate 23
24 13 December 2019	25 Ghaffari's employment terminated by CBA
26 23 January 2020	27 Investigation allocated to DSC Bainbridge
28	29 Investigation proceeding during period with COVID lockdowns
30 22 July 2021	31 Ghaffari arrested and interviewed by police
32 22 April 2022	33 Charged on Summons
34 25 May 2022	35 Filing hearing – Melbourne Magistrates' Court
36 June 2022	37 Mr Crisp contacts DSC Bainbridge and states Ghaffari wishes to make a statement
38 20 June 2022	39 Informant advised by OPP through Mr Crisp that Ghaffari wishes to make a statement. Informant on temporary uniform duties at time.
40 29 July 2022	41 Committal mention – Melbourne Magistrates' Court 42 Adjourned for plea negotiations
43 Early August 2022	44 DSC Bainbridge returns to Financial Crime Squad and contacts Mr Crisp to arrange

	contact with Ghaffari.
45 5 August 2022	46 DSC Bainbridge meets with Ghafarri who provides him with a prepared statement primarily regarding known co-offenders (First statement dated 5/8/22)
47 12 September 2022	48 Ghaffari emails DSC Bainbridge stating there were others in his case breaking the law and he is willing to make a statement.
49 14 September 2022	50 Committal mention – Melbourne Magistrates' Court 51 Adjourned for plea negotiations to continue
52 11 October 2022	53 Ghaffari emails DSC Bainbridge providing "final statement" regarding 33 other CBA employees allegedly engaged in wrongdoing (Final statement dated 11/10/22)
54 13 October 2022	55 Committal mention – Melbourne Magistrates' Court 56 Matter resolved – plea of guilty entered 57 Plea listed 16 May 2023
58 14 October 2022 – 6 March 2023	59 DSC Bainbridge on 5 months' unplanned leave
60 24 March 2023	DSC Bainbridge forwards Ghaffari's 'final statement' to CBA investigators 61
62 16 May 2023	Plea hearing in County Court – Arraigned and pleaded guilty – adjourned part-heard 63 CBA investigation ongoing
64 14 July 2023	Further plea hearing – adjourned part-heard DSC Bainbridge cross-examined on affidavit dated CBA investigation still ongoing.

		65 CCO assessment ordered.
66	11 October 2023	67 CBA investigation finalised 68 CBA investigator Jennifer Nagle advises DSC Bainbridge by email that the bank was not able to substantiate any of the allegations
69	20 October 2023	70 Further plea hearing – adjourned for sentence (then relisted on 22 November 2023)

Your personal circumstances and background

71 Your counsel tendered the following documents:

(a) document headed "Defence Plea Submissions", undated and a document headed, "Further defence pleas submissions", undated (exhibit "A").[4]

(b) reports of the clinical psychologist, Mr Bernard Healey, dated 7 May 2022 and 15 April 2023 (exhibit "B"). Mr Healey assessed you on 7 May 2022 for three-and-a-half hours and on 15 April 2023 for two hours. Subsequently, a further short report from Mr Healey, dated 16 October 2023, was also tendered and made part of exhibit "B";[5]

(c) report of the psychiatrist, Associate Professor ("Dr") Danny Sullivan, dated 10 May 2023 (exhibit "C"). Dr Sullivan assessed you on 2 May 2023 for approximately one hour;

(d) reference from Mr Ferdows Akbari, MD, (undated) (exhibit "D").

(e) In that document, Mr Akbari described himself as your cousin and having known you for most of his life, having grown up together. He comments that although you are currently "facing serious charges", he

[4] The "Further Defence Plea Submissions" was in response to various issues raised by the Court by way of email to both parties, dated 2 October 2023. In particular, the Court queried those acting for you whether there was any reliance on the so-called principles of *Verdins* and, whether the concept of "delay" was relied on.

[5] Again, such report was in response from a query from the Court, dated 2 October 2023, whether you sought and obtained treatment from Mr Healey, or any other psychologist, following your offending, which had been suggested in a report from Associate Professor Danny Sullivan, and in the reference from Mr F Akbari.

believes that you are an individual of good character who has made a serious error of judgment. He asserts that, since the allegations were made, you have expressed deep remorse and regret for your actions. Furthermore, he notes that you have taken the initiative to receive assistance from a psychologist to address the underlying issues that led to your mistake. He is confident that you are unlikely to re-offend and "will take the necessary steps to make amends for [your] mistake".

(f) Mr Akbari notes at that, the time of your offending you were living in isolation and were lonely, caring for your elderly migrant parents, and you have poor English and literacy skills. All your siblings and close cousins had moved away, leaving you with little support or companionship. Notwithstanding this, he describes you as a "giving and compassionate person". He asserts that you have provided support to members of the newly-arrived Afghan community by translating for them and helping them find jobs and settle in south-east Melbourne.

(g) He describes you as a kind, gentle and genuine person who has always put "others before [yourself]", making sure that "everyone around [you] is cared for and supported". He describes your mistakes to be "truly out of character for [you]".

(h) reference from Mr Christopher Heath, dated 26 April 2023, (exhibit "E").

(i) In that document, Mr Heath describes himself as a director of Dual Trades Australia Pty Ltd ("Dual Trades") and states that, since February 2022, you have been "an integral part of our team at Dual Trades Australia".

(j) He describes you as "enthusiastic, dependable and responsible", and that your current role at Dual Trades involves working with Mr Heath and other members of the team to undertake housing renovations, cabinetry and electrical installations throughout Melbourne.

(k) In particular, Mr Heath notes that you have "earned [his] trust and confidence to be responsible for supervising works when [he] is not on site". This involves purchasing supplies and you have been assigned a company fuel card.

(l) Mr Heath notes that you are "very remorseful for [your] actions and regrets decisions that were made during that time";

(m) Reference from Mr Ali Haiddari, dated 2 May 2023, (exhibit "F").

(n) In that document, Mr Haiddari describes himself as a community leader at BusKonnect, and a director at GetBroker Pty Ltd. Mr Haiddari asserts that he has known you for over ten years since high school and can "attest to [your] exceptional character and conduct". He notes that he has found you to be friendly, kind, reliable and a hardworking individual with strong values.

(o) Mr Haiddari also asserts that he believes that people have taken advantage of your kindness and that you have been under the influence of substances which led you to depression and anxiety, thus making you more vulnerable and your decision-making was affected. He notes that you have informed him that you have realised your past mistakes and feel "terrible" about the impact it had, and Mr Haiddari considers that you have learned from your experience and it will never happen again;

(p) Reference of Mr Mohammad Aref Ghaffari, dated 24 April 2023 (exhibit "G").

(q) In that document, Mr Ghaffari described himself as your older brother and, of course, having known you for your entire life. He asserts that you have positive qualities, including your kind heartedness, honesty and hardworking nature – although he accepts that your current situation might "suggest otherwise".

(r) He describes you since your offending to be “extremely remorseful” and having shown genuine regret for your actions, and expressed your remorse to him “multiple times”. In particular, he notes that he has seen you take responsibility for your actions by actively seeking professional help to understand your behaviour and to make amends for your actions.

(s) He also describes you as a selfless person with a long history of volunteering for the local Afghan community, spending countless hours helping those who are struggling with language barriers. He also notes that you continue to volunteer in the Afghan community and have been a role model for many people.

(t) Your offending is described by your brother as a one-time mistake, and that otherwise you have always been a law-abiding citizen and never been in trouble before. Again, your brother stresses that you have mentioned to him that you deeply regret your actions and that you will never make such bad decisions again;

(u) Affidavit of Mr George Vassis, sworn 11 May 2023, (exhibit “H”).

(v) In that affidavit, Mr Vassis describes himself as the principal of Vassis & Co, solicitors, and having the care and conduct of this matter on your behalf. He notes in such affidavit that you have provided to the informant the “names and details of other alleged participants in [your] criminal activities who had knowledge of the alleged illegal activities”. Such names and details of persons were in turn provided by the informant to the Commonwealth Bank of Australia for investigation.

(w) It was asserted by Mr Vassis that it was “highly likely” that these persons may be investigated or charged with offences in this case as a result of information provided by you.

72 As a result of the assistance provided to the investigators by you, it was sought that there be a closed court during the course of the plea hearing to protect your safety (and/or your family) when the said assistance was provided, or disclosed, or referred to, during the plea hearing. After argument between the parties, an order was made closing the Court, bearing in mind such assertions that such information had been given by you to the relevant authorities.

73 Based on the documents tendered on your behalf and, in particular, the reports of Mr Healey and Dr Danny Sullivan, which contain various histories, and partly based on various submissions made by your counsel, I note the following:

- You were born in Kabul, Afghanistan with an Hazara background. You told Dr Sullivan that your father worked as a general in the Afghan army — although, curiously, in the history given to Mr Healey, you stated that you had "no recall of [your] father's work" — and your mother was involved in home duties. Your parents now live in Australia and both have had physical problems resulting in them receiving the Disability Support Pension.

- You are the youngest of three brothers, with your older brothers working in community services interstate in Australia.

- You and your family fled Afghanistan in approximately 1999 when you were six years old, due to persecution from the Taliban. In particular, you informed Dr Sullivan, that your father had been captured and tortured by the Taliban and that the family had to pay a ransom to have him freed;

- The family fled first to Malaysia and then Indonesia, then came by boat to Christmas Island. When in Indonesia, the family was homeless and penniless, you had to beg for food and live on the street. The boat trip to Christmas Island took about thirty days at sea during which time some people fell overboard and the conditions were bad;

- You were initially taken to the Woomera Detention Centre and detained there for nine months and reported to Dr Sullivan that you saw “horrors” there. In this respect you informed Mr Healey that, when at Woomera, you witnessed the decline in mental health of many people, including your parents and siblings, and a number of people also suicided.

- Subsequently, you and your family secured temporary visas and made your way to Brisbane. After a period of some months, you and the family moved to Griffith in New South Wales, where all the family became involved in seasonal fruit picking and other related work;

- You received no formal education in Afghanistan and underwent some very basic English classes at Woomera, but on moving to Brisbane. you commenced in Grade 4, but when the family moved to Griffith you were placed in Grade 3 and continued through your primary school, and then into Griffith High School, where you completed the Higher School Certificate. During this time you, were also performing some part-time work at a Coles store. You eventually left secondary school at around twenty years old;

- In or about 2013, you moved to Melbourne and lived in a share house and again commenced part-time work with Coles and also worked part time at a McDonalds store. You commenced with the Commonwealth Bank in 2014.

- Your parents came to Melbourne in or about 2016/2017 and ultimately bought a house, after which you commenced to live with your parents.

- After your employment was terminated with the bank in 2019, you informed Mr Healey that you completed a Diploma in Counselling in 2020, after which you worked in Allambie Care and Anglicare. However, as a result of the subject charges, your “Working With Children Check” was suspended, which saddened you, because you enjoyed this work very much. Since then, you have been employed by Dual Trades and, in this respect, I note

the reference from Mr Heath (to which reference has already been made), who is a director of Dual Trades, and describes you as being an "enthusiastic, dependable and responsible" employee.

- You informed Dr Sullivan that your father was "hard headed" and was strict and punished transgressions with a belting. You considered this was unfair and that you were specifically targeted, although denied suffering any serious injuries and, as a child, welfare authorities were not involved. You denied being subject to any sexual abuse or neglect.

- Although Muslim in faith, you were not overly observant and you enjoyed playing soccer, but did not play currently. You also reported strong links to the Hazara community and also noted that you had extensive extended family in Australia.

- You informed Dr Sullivan that you did have a previous serious relationship for some three years, but had no children. At the time of consultation with Dr Sullivan, you had been in a relationship for nearly eighteen months and your current partner is of Afghani background. You informed Dr Sullivan that you did not feel able to discuss your charges with her and if it were not for the court cases you would proceed to propose marriage.

- Again, you told Dr Sullivan that you are not currently taking any medication. You also informed him that you have had one surgical procedure – a Nissen fundoplication due to gastro-oesophageal reflux. You underwent laparoscopic surgery some six years ago for heartburn, however with the heartburn resolved, you continued to experience reflux which was exacerbated by stress. You also informed Dr Sullivan that you had dislocated your right shoulder approximately six times while playing football. You have not had any other surgical procedures.

- You informed Dr Sullivan that you had seen Mr Healey, for "assessment and also see him a few times to discuss problems and seek treatment". You reported that you experienced significant stress and symptoms of depression and anxiety, but tried to manage these yourself.

- You informed Dr Sullivan that you commenced smoking tobacco around Year 10, smoking up to twenty cigarettes per day, before ceasing smoking cigarettes and moving to vaping nicotine cartridges, of which one lasted four to five days.

- You commenced drinking alcohol in your late teens and this increased during COVID, when you were unable to exercise many leisure options. You informed Dr Sullivan that you had increased to one bottle of wine per night, but now had cut down and was drinking about half a bottle.

- Between the ages of twenty-two to twenty-five, you reported smoking cannabis on several occasions, but denied adverse effects associated with this, and told Dr Sullivan that you had not persisted. You denied using any other stimulants such as cocaine, amphetamines or hallucinogens such as LSD or magic mushrooms, anabolic steroids, inhalants or opiates.

74 When queried about your forensic history, Dr Sullivan recorded:

> "[You] told [him] that [you] had felt intimidated and threatened by the co-offenders. [You] told [him] that [you were] arrested around one and a half years ago and gave a "no comment" interview to police and to the bank. [You] reported [you] would plead guilty and was very ashamed of [your] conduct. [You] told [him you] had lost friends at the bank and that [your] parents were disappointed in [you]". (See exhibit "C", report of Associate Professor Sullivan, dated 10 May 2023 at paragraph 38).

75 It should be noted that, in his initial report dated 7 May 2022, Mr Healey recorded the following at page 2:

> "Matters in relation to the first ever offending were discussed with [you] with some 60 charges in between the February and August 2019 where he dishonestly obtained, for another person, financial advantage by falsely changing their residential status on their applications for loans essentially and in some cases for credit cards. The same Modus

> Operandi was repeated throughout that period. [You were] employed by the Commonwealth Bank in [redacted] as a customer service specialist and worked in the bank there for about five years but [you] were dismissed in relation to these matters in the October/November of 2019. [You were], [you] said, endeavouring to help clients concerned to secure a sound start with their lives in a new country with much empathy for them particularly in view of the trials and tribulations suffered by [you] and [your] family in [your] efforts over two years' to secure freedom in Australia. Such evidence, as the history indicated, [you] suffered post-traumatic stress disorder. [You have] remained mortified and saddened by [your] actions which [you] acknowledged were wrong but occurred in the context of empathy. [You] did not seek these people and there were part of a group of people seeking assistance from the bank. These applications were vetted by [your] manager, then scanned and sent to the personal loan officers for final approval. [You were you] said pressured at the time by [your] superior to secure a higher level of customers in order to gain promotion and at the same time [you] were being pressured by [your] former girlfriend who held a senior government position". (See exhibit "B" report of Mr Healey dated 7 May 2022 at page 2).
>
> (Emphasis added.)

76 I also refer to the most recent report of Mr Healey, dated 16 October 2023, wherein he states, in part:

> "As noted in the second Report [15/15/23] [you] remained very apprehensive about the forthcoming Court matters. Indeed the long delay leading up to police interview and formal charges and then a long delay to the Court hearing has exacerbated his stress where Generalized Anxiety, Post Traumatic Stress remained at Disorder level with the addition of Major Depression by April of 2023.
>
> [You] remained in contact with the writer after each assessment through brief teleconferencing on some 6 occasions. [You were] assisted to become more settled in regard to [your] emotional turmoil, in particular the unrealistic expectations of [your] lady friend. [You were] advised that [you] should not be subject to such manipulation and demands in relation to achieving a higher level of education and seek positions of higher remuneration. She did persist in trying to continue with a relationship despite [your] endeavours to end the relationship.
>
> On the second occasion specific testing was indicative of memory problems which were attributed to stress by the writer. [Your] level of depression is of concern and [you] did benefit from the regular contact. It was anticipated that [you] would seek a Mental Health Care from [your] GP which would provide some 6 hours of counselling initially."

The evidence of the psychologist, Mr Bernard Healey

77 When Mr Healey first assessed you on 7 March 2022, you told him, among other things, that you had never been prescribed medication for anxiety or depression or post-traumatic stress. However, you did advise Mr Healey that you visited a

dermatologist on 9 March 2021 in relation to hair loss and was told that was related to stress. The doctor concerned, Dr Saravanan Sahanmagin, also commented, apparently, that you suffered from GORD, which, as already reported, is a gastro-oesophageal reflux disorder.

78 Mr Healey performed various psychological testing and formed the opinion that intellectual testing indicated that you had a sound average intellectual capacity with a full IQ of 97, placing you in the 42nd percentile, meaning that some 58 per cent of peers would perform better.

79 In particular, Mr Healey diagnosed you to be suffering from Post-Traumatic Stress Disorder caused by the traumatic experience that you suffered in your childhood years and what he described as your "torturous journey" to Australia.

80 When seen more recently on 15 April 2023 – some two or three weeks prior to your assessment by Dr Sullivan ─ Mr Healey noted that you presented in a similar way to when you had been last seen in May of 2022. At the assessment on 15 April 2023, he noted the absence of ongoing alcohol abuse and the absence of any illicit drug intake, and that you were not on any prescribed medication. In particular, Mr Healey reported:

> "… [You] appeared to be reasonably settled but somewhat subdued in demeanour and very apprehensive about the Forthcoming Court matter. [You were], as noted previously, quite cooperative throughout the interviewing and testing procedures and tried to give of [your] best to them. [You haven't] been involved in any further illegal activities. In relation to ongoing stress as noted previously [you are] still troubled by continued frontal hair loss and also GORD which is gastro oesophageal reflux disorder with continuing difficulties in swallowing effecting (sic) [your] food intake, and with some weight loss. [You have] remained very self-reproachful over [your] offending matters which were covered in some detail in the previous Report in regard to dishonestly obtaining financial advantage for another person." (See page 1 of report dated 15 April 2023)

81 You reported to Mr Healey at that time that you were still involved with the Afghan community centre in the south-east metropolitan area supporting and monitoring

students about their studies. Furthermore, you continued a friendship with a young woman aged twenty-six who, according to Mr Healey, was:

> "… quite demanding and controlling, being denigrating of [your] work in construction and endeavouring to persuade [you] to pursue university studies to secure a position of greater stature". (See page 4 of the reported dated 15 April 2023).

82 Again, psychological testing was undertaken by Mr Healey. In particular, following your complaint about memory functioning, testing was undertaken, the results of which placed you at the 9th percentile, meaning that 91 per cent of peers would perform better. Mr Healey was of the view that the very low result was really attributable to ongoing stress, with the areas most affected being immediate memory and attention, as well as delayed memory. He also considered that, once the court matters are dealt with, the application of the test, once again, would probably, over a period of time, demonstrate improvement, where your performance would approach that of your average intellectual capacity.

83 Mr Healey concluded by stating, in part:

> "Matters of health have remained quite troublesome for [you], mentally, physically and emotionally. [You] still [suffer] hair loss through stress and the GORD condition remains with [you], still troublesome despite some surgical intervention. [You have] ceased his involvement in alcohol abuse and the smoking of cannabis. [You suffer] Post-Traumatic Stress Disorder. [Your are] deeply concerned about [your] future as [you have] been excluded from work which [you] very much enjoyed as a case worker with youth because of the fact that [you have] formal charges. [You] also [experience] turmoil in [your] life in relation to a friendship relationship with a young woman aged 26 who, from description, seems to be controlling and demanding of [you] and at times even denigrating of [your] family. [You seem] unable to bring that relationship to an end." (see page 6 of report dated 15 April 2023)

84 Mr Healey also recorded that your position with the Connect property services company involved you working 7.30am to 5.00pm up to seven days a week and you were earning "what you described as a reasonable income". (see page 7 of report dated 15 April 2023)

The report of the consultant forensic and adult psychiatrist, Dr Danny Sullivan

85 When seen by Dr Sullivan on 7 May 2023, he obtained histories from you in relation to your personal life, medical history, psychiatric history, substance use history and forensic history. Dr Sullivan also had available the first report from Mr Healey dated 7 May 2022 and noted the various contents contained in that report. Dr Sullivan also made a mental state examination.

86 On the basis of the various histories obtained from you, together with his mental state examination, Dr Sullivan was of the following opinion:

> "[49] [You are] a 29-year-old man of Afghan/Hazara background. [You] reported that [your] family was subject to persecution in Afghanistan. [You] came to Australia by boat as an asylum-seeker in childhood, and had since obtained Australian citizenship. [You] described fearful recollections of homelessness in Indonesia and a protracted boat trip to Christmas Island, and recollected being placed in Wimmera detention centre. [You] described a childhood marked by harsh paternal discipline and excessive work, and bullying at school.
>
> [50] [You] reported some minor behavioural and learning difficulties at school, but had managed to complete [your] HSC with bare passes. [You] had since completed some vocational tertiary studies, and it appeared [you] had maintained consistent employment.
>
> [51] [You reported] significant features of anxiety and depression. These are consistent with an **adjustment disorder with mixed anxiety and depressed mood,** as set out in the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition {DSM-5).* Adjustment disorder appears manifest in increased levels of rumination and worry, and he reports intermittent panic attacks. These have arisen since being charged and appear associated with worrying about the court case, its consequences and [your] future. Symptoms have been persistent due to the protracted nature of the court case. [You have] not required specialist mental health care until recently consulting psychologist Mr Healey.
>
> [52] There is history of **moderate substance use disorder** involving **alcohol,** and a brief period of use of cannabis. It is likely that alcohol use brings short-lived relief from stress, but may in the longer term exacerbate the level of anxiety and distress that [you are] experiencing.
>
> [53] [You do] not have any overt cognitive impairment. [You report] some difficulties with focus and attention, but it is difficult to disentangle these from current levels of stress at [your] legal concerns. On review of [your] school reports, there is insufficient information to support a diagnosis of attention deficit hyperactivity disorder, and [your] work history is of sustained employment.

[54] [You report] past traumatic experiences as a child and subsequent intrusive recollections and distress. While [you demonstrate] some post-traumatic features, [he does] not consider that [you] would meet the full complement of symptoms of post-traumatic stress disorder, in particular causing clinically significant distress or impairment in functioning.

[55] There is no indication of psychotic illness.

[56] [He does] not consider that mental disorder was causally associated with the alleged offending. [You have] reported that [you were] fearful of repercussions from the two men who engaged [you] in offending, and has also reported that [you] felt sorry for the people applying for loans and wished to assist them.

[57] There is no overt indication of personality disorder, and [your] childhood does not appear to have been marked by conduct disorder. [You do] not exhibit significant antisocial traits.

[58] [You are] experiencing significant shame, and [have] not for instance disclosed [your] charges to [your] girlfriend. [He considers] it likely that incarceration will weigh more heavily upon [you] should [you] be imprisoned, due to limited coping skills, reluctance to seek and utilise help such as medication or psychological therapies, shame and isolation. In addition, the availability of appropriate psychological therapies is limited across the Victorian prison system.

[59] [You] would likely derive some benefit from a trial of SSRI (selective serotonin reuptake inhibitor) medication, and should reconsider the medication proposed by [your] GP. This is the most appropriate evidence-based treatment for the mild features of mood disorder that [you are] experiencing. [You] would also benefit from focused psychological interventions such as cognitive-behavioural therapy, which are likely to lead to some symptomatic resolution.

[60] [He considers] that [you] would benefit from a brief drug and alcohol intervention, potentially with outpatient detoxification and subsequent relapse prevention strategies. This could be provided through a specialist drug and alcohol agency.

[61] [You] could obtain these through [your] general practitioner, with referral on a mental health care plan to a psychologist. Alternatively, [you] might wish to refer [yourself] to Foundation House, which has experience in assisting people with similar life experiences." (see report or Dr Sullivan dated 10 May 2023)

(Emphasis added.)

Matters in mitigation of your sentence

87 Your counsel referred to the following matters in mitigation of your sentence for the subject offending:

(a) It was submitted that your plea of guilty was made at an early stage at a committal mention. I have already recorded that the prosecution has accepted such plea can be "characterised as a plea at the earliest opportunity".

(i) Furthermore, it was submitted that such plea had utilitarian value as it would save the Court, and the prosecution, time and resources;

(ii) Such a plea was entered into when the ordinary operation of the Court had been affected by the COVID-19 Pandemic and such a plea should attract "a natural and palpable amelioration of sentence". Reference was made to *Worboyes v R*,[6] wherein the Court of Appeal (consisting of Priest, Kaye and T Forrest JJA), stated in part:

> "For these reasons, we consider that — all other things being equal — a plea of guilty entered during the currency of the COVID-19 pandemic is worthy of greater weight in mitigation than a similar plea entered at a time when the community and the courts are not afflicted by the pandemic's effects. A plea of guilty during the pandemic ordinarily should attract a more pronounced amelioration of sentence than at another time. Although a sentencing judge need not quantify the extent of any 'discount', he or she must ensure that the plea of guilty results in a perceptible amelioration of sentence."

(b) In written submissions, counsel for the prosecution accepted that the plea of guilty has "utilitarian value and is indicative of acceptance of responsibility". Furthermore, counsel for the prosecution accepted the "discounts" relevant to s6AAA of the *Sentencing Act* 1991 and the Court of Appeal decision of *Worboyes v R*[7] had application.[8]

(c) It was also submitted that your plea of guilty was also reflective of "genuine remorse and shame". I note that, in the references from Mr Akbari (exhibit "D"), Mr Heath (exhibit "E"), Mr Ali Haiddari (exhibit "F") and Mr Mohammad

[6] [2021] VSCA 169 at paragraph [39]
[7] *Op cit*
[8] See exhibit 4, Prosecution Submissions on Sentence – dated 15 May 2023.

Aref Ghaffari (exhibit "G") and the reports from Mr Healey and Dr Sullivan, there is recorded how you stated your remorse and regret for your actions.

(d) Counsel for the prosecution submitted that your plea of guilty "was also indicative of some remorse, however you denied the offending to CBA and also denied the offending during your police record of interview."[9]

(e) I accept that you have demonstrated remorse in relation to the subject offending.

(f) You have no prior or subsequent convictions for any criminal activity;

(g) It was submitted that you are capable of reform and rehabilitation and that you are "seeking assistance to rehabilitate [yourself]".

(h) Again, counsel for the prosecution submits that:

> "[You have] no prior or subsequent convictions. [You have] a good work history and the prosecution accepts [your] prospects or rehabilitation are good.";[10]

(i) It was submitted by your counsel that, based on the opinion of the psychiatrist, Dr Sullivan (in particular at paragraphs 51 and 58 of his report dated 10 May 2023 which have been referred to and highlighted earlier in these Reasons), the so-called Principles 2, 5 and 6 of the Victorian Court of Appeal decision of *R v Verdins; R v Buckley; R v Vo*[11] are enlivened. In that decision, Maxwell P and Buchanan and Vincent AJA, stated, at paragraph 32:

> "Impaired mental functioning, whether temporary or permanent ("the condition"), is relevant to sentencing in at least the following six ways:
>
> 1. …
>
> 2. The condition may have a bearing on the kind of sentence that is imposed and the conditions in which it should be served.

[9] See exhibit 4, Prosecution Submissions on Sentence – dated 15 May 2023.
[10] See exhibit 4, Prosecution Submissions on Sentence – dated 15 May 2023.
[11] (2007) 16 VR 269

3. …

4. …

5. The existence of the condition at the date of sentencing (or its foreseeable recurrence) may mean that a given sentence will weigh more heavily on the offender than it would on a person in normal health.

6. Where there is a serious risk of imprisonment having a significant adverse effect on the offender's mental health, this will be a factor tending to mitigate punishment."

(j) Again, in her written submissions, counsel for the prosecution submits the following in relation to the evidence of Mr Healey and Dr Sullivan:

> "11. **It is not said that [your] mental health is causally related to the offending**. [You are] of average intelligence and there are no personality issues or psychosis.
>
> 12. Given the conflict between the SULLIVAN and HEALEY repots, the Prosecution concedes that while [you have] some symptoms of *Post-Traumatic Stress Disorder,* [your] condition does not rise to a formal diagnosis. It is noteworthy that despite this, [you were] able to be gainfully employed in a responsible position that allowed [you] to defraud [your] employer. [You have] since been able to obtain and maintain further employment.
>
> 13. The diagnosis of *Adjustment Disorder with mixed anxiety and depressed mood* would appear to be reactive to [your] current situation - being charged, the accompanying shame, and not being able to continue with [your] volunteering activities.
>
> 14. Dr Sullivan opines that it is likely that incarceration would weight (sic) more heavily upon [you] should [you] be imprisoned, due to limited coping skills, and reluctance to seek and utilise help. However that [you are] reluctant to ask for help or avail [yourself] of treatment in custody would not appear to enliven *Verdins* limb 5.
>
> 15. It is also noteworthy that [you] did seek psychological help in the community and this is being put as a relevant matter going to prospects of rehabilitation."[12]

(k) Clearly, the clinical psychologist, Mr Healey, diagnosed you to be suffering from general anxiety and post-traumatic stress, and with the addition of major depression by April 2023, whereas the psychiatrist, Dr Sullivan, diagnosed you be suffering an adjustment disorder with mixed anxiety and depressed mood. In particular, Dr Sullivan was of the opinion

[12]See exhibit 4, Prosecution Submissions on Sentence – dated 15 May 2023.

that the Adjustment Disorder manifested itself in increased levels of rumination and worry, and intermittent panic attacks. Again, clearly enough, Dr Sullivan expresses the opinion that incarceration will "weigh more heavily [on you]" should you be imprisoned, due to your limited coping skills and reluctance to seek and utilise help, such as medication or psychological therapies. In any event, Dr Sullivan notes that appropriate psychological therapies are limited across the Victorian prison system.

(l) Although Mr Healey does not express an opinion as to how you would cope with imprisonment, I accept a reasonable inference could be drawn that a sentence of imprisonment will weigh more heavily on you, compared to a person in normal health.

(m) However, neither Mr Healey, nor Dr Sullivan, opine that there is a "serious risk of imprisonment having a significant adverse effect" on your mental health. Indeed, Mr Healey seemingly traces back your anxiety to be caused, to some extent, by the interaction with your partner, who, according to you, had been very demanding of you.

(n) After a careful consideration of the evidence, I do accept, essentially, the evidence of Dr Sullivan, that so-called Principle 5 of *Verdins* is enlivened and, indeed, constitutes a mitigation factor, to which some weight should be attached;

(o) After being queried by the Court, your counsel submitted that you do rely on the issue of "delay" as a mitigating factor. Significant delay between the time an offender is interviewed by police and the time charges are laid, as well as the time between the laying of the charges and trial, or plea hearing, can be a powerful mitigating factor.[13] Although delay in itself creates no automatic right to a sentencing discount, it is clear enough that, when the prosecution unduly delay bringing the matters to court, or, more particularly,

[13]See *Tones v R* [2017] VSCA 118 at paragraph [36]

where the delay is through no fault of the alleged offender or his solicitors, there is much more likely to be a discount.[14]

(p) Counsel for the prosecution submitted that, based on the chronology now before the Court, there has been some delay from when your employment was terminated to when you were charged and, indeed, from when you were charged, until the ultimate plea hearing.

(q) Generally, delay is analysed as a mitigating factor by reference to two limbs – the first limb concerning "unfairness" to the alleged offender, in that a charge, or charges, were "hanging over" his head and caused him anxiety. The second limb concerns whether, during the course of the delay, the offender made progress towards rehabilitation, if prospects of rehabilitation are good.[15]

(r) I consider that the first limb concerning unfairness is particularly relevant to your situation, bearing in mind the delays made plain by the chronology set out earlier in these Reasons for Sentence. In particular, where the unfairness limb is invoked, psychologists sometimes give support to the duress endured by an offender.

(s) The second limb of the concept of delay – rehabilitation – will also have some relevance, given that you have been on bail since your arrest. Over the period of time leading up to your plea hearings, you seemingly have not come under the notice of the authorities and, indeed, have been gainfully employed for most of that time.

(t) Your counsel referred to the following in support of his submission regarding "delay":

[14]See *R v Nikodjevic* [2004] VSCA 222 at paragraph [22]
[15]See *R v Merrett, Piggott & Ferrari* (2007) 14 VR 392 at paragraphs [35]-[39]

(i) The offending occurred in 2019, with you being terminated on 13 December 2019. However, it was not until 22 July 2021 that you were arrested, interviewed and charged by the police;

(ii) The matter was resolved at a committal mention on 13 October 2022, with a plea hearing listed for 16 May 2023, ultimately proceeding on 16 May 2023, later adjourned part heard to 14 July 2023 and finally adjourned part heard to 20 October 2023;

(iii) In his report, when seen by Dr Sullivan on 15 April 2023, he was of the opinion that your psychological symptoms had been persistent due to the "protracted nature of the court case";

(iv) As already detailed, you have sought advice from the psychologist, Mr Healey, to assist you with your psychological symptoms. In particular, in his report dated 16 October 2023, Mr Healey notes that you have remained "very apprehensive about the forthcoming court matters". Mr Healey adds that:

> "Indeed the long delay leading up to police interview and formal charges and then a long delay to the Court hearing has exacerbated [your] stress where Generalized Anxiety, Post Traumatic Stress remained at Disorder level with the addition of Major Depression by April of 2023.";

(v) Again, as already detailed, you have been employed by Dual Trades Australia Pty Ltd since February 2022 and have impressed your employer as to your work ethic.

(u) Ultimately, I am of the view that the issue of "delay" is relevant as a mitigating factor in determining your sentence. In this respect, I consider that both the first limb concerning "unfairness" and the second limb concerning "rehabilitation" are both relevant.

Assertion by the offender that he has assisted or was willing to assist the authorities

88 On the first day of the plea hearing – that is 16 May 2023 ─ much time was spent with your counsel asserting that you have assisted or were willing to assist the authorities, by naming alleged co-offenders. It was submitted by your counsel that this criminal enterprise could not have been executed by a sole offender and that, at the time of the first day of the plea hearing, you had already offered detailed information to investigators and had offered to make a sworn statement in relation to the alleged offending.

89 At that time, counsel for the prosecution made the general submission that, to the extent that there had been approaches made by you to the authorities, any information supplied had not resulted in any further prosecutions.

90 At that stage, the Court only had access to a limited number of documents, the main documents being a trail of emails, which were ultimately tendered (see exhibit 2). Such emails consisted of the following:

(a) An email from you dated 12 September 2022 to a solicitor at the Office of Public Prosecutions, wherein you identify yourself and assert that:

> "There were other persons who were involved in this case breaking the law and I'm prepared to make swarm statements describing their activities
>
> I seek this opportunity as I wish to tell the truth".
>
> (sic)

(b) Also in that email you named such persons to be:

[redacted] ([redacted]),

[redacted] ([redacted] CBA),

[redacted] ([redacted] CBA),

[redacted] (younger guy in his 30's who used to work at [redacted] CBA);

[redacted] (old [redacted] employed at CBA, now in real estate).

(c) You asserted that these activities were "illegal over an extended amount of time" and go on to state that you "would be prepared to give a sworn statement undertaking to give evidence against all of them if a trial is called upon";

(d) An email from the informant, Detective Senior Constable Luke Bainbridge, dated 19 September 2022, wherein he seeks clarification of what he refers to as two points:

> "How do these persons relate to your charges?
>
> Was their offending totally separate to your offending";

(e) An further email from you, dated 9 September 2022, to a solicitor at the office of Public Prosecutions, in the same terms as your email dated 12 September 2022;

(f) An email from your counsel, Mr Ian Crisp, dated 24 March 2023, addressed to the informant, wherein it is stated:

> "Luke as discussed could you please confirm the information that you gave me this morning.
> That is that Ghaffari offered to give confidential information re other offenders in his matter. that he handed you a document confirming those matters and you interviewed him re that matter and you have undertaken to pass that information to the CBA.";
>
> (sic)

(g) A further email from the informant, dated 24 March 2023, to Mr Crisp, wherein it is stated:

> "As discussed I have forwarded the information provided by GHAFFARI relating to other CBA employees to the investigator that conducted the GHAFFARI investigation from the Commonwealth Bank."

91 At that stage, there was no other material to assist the Court in coming to any view as to what assistance, if any, you had given to relevant authorities. Accordingly, the Court directed that the prosecution file an affidavit from the informant setting out the events which have occurred over time, involving you giving assistance to the relevant authorities leading up to the plea hearing. As a result, the matter was adjourned to 14 July 2023 to allow an affidavit to be prepared by the informant.

92 On 14 July 2023, counsel for the prosecution tendered an affidavit of the informant, sworn on 23 June 2003 (exhibit 3) ("the affidavit") . In his affidavit, the informant deposes as follows:

> "1. [He has] been a Detective of Victoria Police for 14 years and [is] currently attached to the Financial Crime Squad. [He has] worked at the Drug Task Force, Briars Task Force, Sexual Crimes Squad, Tideland Task Force and Aimed Crime Squad.
>
> 2. [He is] the informant in the matter of former Commonwealth Bank employee, [you], charged with the offences of Obtain Financial Advantage by Deception.
>
> 3. [You were] interviewed by the Commonwealth Bank of Australia on 3 October 2019 and [you] did not provide any information regarding other offenders to investigators. [Your] employment was subsequently terminated.
>
> 4. [You were] interviewed by Financial Crime Squad investigators on 22 July 2021 and [you] did not provide any information regarding other offenders to investigators.
>
> 5. In around June 2022, [he] was contacted by Barrister, Ian CRISP whom stated that [you were] willing to assist investigators and provide a statement.
>
> 6. On 20 June 2022 [he] received an e-mail from Jacky VERKADE from the OPP that indicated that Mr CRISP had called her today advising that he had spoken with [him] regarding resolving the matter and [you] making a statement. During this time [he] was conducting temporary uniform duties which made contact with Mr CRISP problematic.
>
> 7. [He] was again contacted by Mr CRISP in July 2022 and upon [his] return to the Financial Crime Squad in early August 2022 [he] requested Mr CRISP to contact [you] and organise a meeting, he also provided a mobile number for [you].
>
> 8. On 5 August 2022 [he] met with [you] at 311 Spencer Street, Docklands in company with a colleague. [You] handed [him] and read

from a prepared statement. In this prepared statement [you] stated that [you were] approached by three 'brokers', Veera, Jeevan and Veloo (these 'brokers' are identified in the BOE). [You] stated that [you were] threatened by these 'brokers' to make applications for personal loans for various customers. (Refer Exhibit 1 - Prepared Statement GHAFFARI - 05/08/2022) (6 Pages)

9. I believe these 'brokers' are: Veeramani SAMIAYYA, Jeevan SANDASAMY and Ramachandran Veloo KANCHIYAPPAN. SAMIAYYA and SANDASAMY have been offshore since [you were] interviewed by the Commonwealth Bank and prior to any police investigation. Veloo was arrested and interviewed, he denied being involved and was not charged due to lack of evidence. The statement made by [you] that Veloo threatened and assaulted [you] to force [you] to make the loan applications in [his] opinion is not believable.

10. The information provided by [you] relating to [your] Manager [redacted]. There is no direct evidence that [you provide] that [redacted] was involved in this offending. [You] stated that [redacted] potentially was not providing sufficient supervision which appears to be the case as it was easy for [you] to commit these offences. It appears that [you were] attempting to link a discussion [you] had with [redacted] about [your] work performance and then being approached by the 'brokers' which in [his] opinion is not believable. [redacted] was not suspected of being involved by the Commonwealth Bank investigators and after dealing with [redacted] personally in [his] opinion [he does] not believe that he is involved in this offending.

11. In relation to the names that [you] provided of other Commonwealth Bank employees that were committing offences similar to [you]. These names were [redacted], [redacted], [redacted], [redacted] (no longer employee) and [redacted] [you] also stated, 'fresh info on others involving the same manager, if these people find out I will be in danger'.

12. On 12 September 2022, [you] sent [him] an e-mail stating that [you] would like to provide sworn statements in relation to other employees at the Commonwealth Bank. The information that [you are] providing relating to other employees committing offences has no bearing on the case for which [you are] charged so [he] sent an e-mail to [you] on 19 September 2022 requesting that [you] clarify whether these names provided relate to [your] offending or is the offending totally separate.

13. On 11 October 2022 [you] sent [him] an e-mail and provided another document titled 'Final Statement'. In this document it appears that [you have] researched [your] BOB and [you attempt] to shift the offending to the Managers including [redacted], [redacted], [redacted] that signed off on the loans rather than [yourself]. There is no indication from any of the witnesses that the Managers had any role in the offending. In [his] opinion the document titled 'Final Statement' appears to be self serving and does not assist the current case before the court. (Refer Exhibit 2 - Final Statement GHAFFARI - 11/10/2022) (10 Pages) (Refer Exhibit 3 - E-mail exchange GHAFFARI - 10/09/2022 and 11/10/2022) (2 Pages)

14. In the document titled 'Final Statement' [you] again provided the names of the Commonwealth Bank employees that were allegedly committing similar offences as [you]. [He] intended to forward this information to Commonwealth Bank investigators at the earliest opportunity so [he] could ascertain if the information was credible however [he] went on extended unplanned leave from 14 October 2022 to 6 March 2023 and [has] since returned working at a reduced capacity.

15. Upon [his] return to work [he] was aware that [you were] pleading guilty and had a plea hearing on 16 May 2023. [He] realised that the information that [you] had provided may cause issues with the plea hearing so [he] contacted the initial Commonwealth Bank investigator, Laura EDWARDS on 24 March 2023. [He] forwarded her the information provided by [you] in the 'Final Statement' relating to the other Commonwealth Bank employees including [redacted] ([redacted] CBA), [redacted] ([redacted] CBA), [redacted] ([redacted] CBA), [redacted] (younger guy in his early 30's used to work at [redacted] CBA) and [redacted] (ex-CBA [redacted] employee now in real estate). [He] also stressed to EDWARDS the urgency of the request due to the impending court date.

16. [He] contacted EDWARDS to find out what was happening with the investigation and she informed [him] that it was being investigated by her colleague, Jennifer NAGLE. [His] experience of dealing with NAGLE since that time has been very frustrating due to lack of responses to messages and e-mails. [He has] since been advised by NAGLE that her investigation should be completed in 6 to 8 weeks from 16 May 2023. This means that this should be completed prior to the new court date of 14 July 2022.

17. The information relating to Jeevan (SANDASAMY), Veera (SAMIAYYA) and Veloo (RAMACHANDRAN) is of no value. [He has] watched numerous hours of CCTV footage of the CBA [redacted] Branch during [your] offending and [your] assertion that [you were] threatened and intimidated to commit these offences in [his] opinion is simply not true. [He has] spoken with numerous witnesses that have dealt with these 'brokers' and none have indicated that they were threatened or intimidated by them. [You] stated to investigators that [you] personally made $20,000 from this offending, however he suspects] that this figure is substantially more.

18. One of the witnesses, [redacted] stated that he went direct to [you] for a loan of $35,000 and [you] attempted to obtain some money from him for his 'fees' after work hours once [redacted] had received the loan amount. So this doesn't fit with [your] assertion that [you] only did it through 'brokers' that were threatening [you].

19. As a matter of reference for the court, the CBA began [your] investigation in July 2019 and it was not forwarded to investigators at the Financial Crime Squad until January 2020 and that was the investigation of one employee.

20. [He is] a very experienced Detective and [has] investigated very serious crimes and very violent offenders, the persons that [you

have] indicated that were threatening or intimidating [you] in this case in [his] opinion do not fit that mould and [he believes] it to be untrue.

21. In [his] opinion the information that [you have] supplied in the document titled 'Final Statement' other than the information relating to the other CBA employees is not true."

93 That affidavit annexed what was referred to as "exhibit 1", being a statement made by you on 5 August 2022. Again, I set that out as follows:

"In 2019 Mohammad Atef Ghaffari was working as a customer service specialist for Commonwealth Bank [redacted] branch.

I was approached by three brokers named Veeramani Samiayya "Veera", Jeevan Sandasamy and Veloo in a similar way at different days within a short time frame of a month.

Veera

In early 2019 [you were] approached by Veera during [your] lunch break in [redacted] carpark by calling out to [you] by name 'Atif asking to speak to [you]. Veera was with three of his friends. He said he is a loan broker and that he will bring [you] customers to apply for a personal loan. [You] then asked Veera can the customers provide documentation to which Veera replied 'as in payslips? Yes'.[You] asked if they were permanent residents and Veera answered 'no'. Then [you] told Veera that [you] cannot proceed the applications due to verification requirements which include needing to be permanent residents or citizens. Veera then forcefully said 'I don't care about the requirements, I just want you to apply for the personal loans and get them approved'. [You] kept on insisting Veera that he cannot apply nor get these applications approved as these applications do not meet the criteria and will be checked by manager and personal loans team who will then decline the application. (Atif resisted multiple times saying "no" to Veera).

- Following the first time Veera approached [you] in the car park and threatened [you] and after disagreeing with his proposal, Veera continued to harass [you] by driving past [your] house, parking near [your] house and knocking on [your] door on multiple occasions. This made [you] more and more afraid as it appeared a more serious threat then [you] had initially imagined. [You] Feared for the safety of [yourself] and [your] family constantly for weeks as it continued and did not seem to go away. [You were] in a state of paranoia about what would happen the next day, how [you] would be approached, how he will hurt [you] or [your] family.

- One morning [you] drove to work and as [you] parked [your] car and got out, [you] saw two men (one of them being Veera) approach [you] at the [redacted] car park. Veera said to [you] 'Atif, I can do this all day and I will keep showing up and threatening you until you agree to approve the loans'. [You] ignored Veera and went to work. After [your] shift ended, [you] drove back home and as [you were] driving into [your] driveway, [you] saw a car pull up behind [you] and Veera was with the same man from the morning who had approached [you] at the car park. Veera got out of the car and was reaching to his back pocket and grabbed his knife and walked up to

[you] and pointed the knife towards [your] stomach and said to [you] 'Atif I will kill you right here right now if you don't agree to apply the loans for my customers'. [You were] scared for [your] life and complied with Veera's demands saying to Veera 'please Veera, don't hurt me. I will do what you want, please don't hurt me'. Veera then put his knife away and said "don't worry I will pay you for the loans and I will see you tomorrow and bring you customers. [You] said to him 'I don't want your money, just please don't hurt me'. He then got in his car and left. The next day he came into [your] workplace and brough a customer with him.

Jeevan

A few weeks after a person by the name of Jeevan approached [you] in a similar way at carpark during brunch break asking [you] to apply for personal loans for his customers while they did not meet the criteria for the loans to be approved. When dismissed he forcefully demanded [you] to proceed with the applications regardless of the consequences.

When refused the brokers told [you] that they know where [you live] stating [your] address and where [your] parents go to the park near [your] house threatening that they will harm Atif and [your] family if [you do] not comply. [You were] shocked and confused as to why and how they know details about [your] address and [your] family. [You] continued to refuse to comply with Jeevan who then showed again at [your] place of work and continued to threaten [you] by saying that he knows Atif has previously processed applications for Veera's customers who did not meet the criteria and that her will reveal this information to Atifs employers and also threatening to hurt Atif and [your] family if [you are] to refuse processing Jeevans' customer applications.

Veloo

Veloo was the last broker that approached [you], Veloo also approached [you] at the carpark at [redacted] in the same fashion as Veera and Jeevan this was around 2-3 weeks after Jeevan approached [you], Veloo was with two of his friends. When Veloo approached [you], [you] felt very scared and intimidated, [You] asked [yourself] 'what the hell is going on?' because already a few people have approached [you] the past few weeks and demanded and threatened [your] family and [your] life to do things which [you're] against.
Veloo said 'hello Atif, please I want to ask you a few questions'.
[You]replied 'hi, what is it that I can help you with'?
Veloo then replied 'I'm friends with Veera and Jeevan and I also need you to apply personal loan application for my customers'.
[You were] in a state of shock once [you] heard what Veloo said because it brought back trauma from the threats that Veera and Jeevan made against [you].
On this day Veloo was wearing a blue shirt with white and red strips and blue jeans. [You] asked Veloo 'please, I don't want to do this' but Veloo also replied with threats like 'I can kill you and your family, I know where you live and you also live with your parents house in Cranbourne'.
[You] refused to help Veloo even though he threatened [you] but then Veloo slapped [you] across the face and grabbed [your] arm.
[You] tried to run away from this situation but was stopped by Veloo's two friends.

Veloo said ‘this is very serious, I will hurt you and kill you and your family if you don’t approve my customers loans’.
[You] felt very scared for [your] family and [you], which [you] then said to Veloo ‘ok, I will do it but please don't hurt my family’.
Veloo agreed to not hurt [you] or [your] family unless [you] don’t do what he asks of [you].
[You] then left the carpark and went back into work, [you] go to the male toilets and start crying because [you] felt very emotional about [your] family and what may happen to them unless [you] comply with Veera, Jeevan and Veloo’s demands.

[redacted] - Bank Manager at Commonwealth Bank [redacted].

In early 2019 [you] didn’t meet [your] KPI targets for a few weeks and [redacted] asked [you] into his office for a discussion. [redacted] asked [you] why you’re not pushing for personal loan to be approved which then [you] informed [redacted] that the clients don’t meet the banks criteria which [redacted] replied in frustration. ‘Atif. I don’t care if they meet the criteria just get them approved and I don’t care how you do it.
This conversation happened a few weeks before the three brokers who approached [you].
[Your] manager’s ([redacted] [redacted]) duties were to interview the clients when they came into the branch and asked them a few questions to verify if they to meet the banks requirements for the personal loan.
He then was supposed to write on their profiles in the customer comment section which is internal view only (Commsee) that the customer meets the banks requirements and that the manager has interviewed the customer and asked them the qualifying questions.
[redacted] [redacted] was supposed to verify and check if all the documents that met the banks criteria for example; Income & payslips, permanent residency, identification, refinancing documents and other bank documents which [you] may not remember at this time.
Once [redacted] was done with the first initial interview, [you] would then commence with the personal loan application and ask for the required documents like payslips, purpose of the loan, duration of their loan and other qualifying question for the loan.
Once the loan was approved by the system (Commsee) then [you] would hand the application to [your] manager [redacted] [redacted] for him to go through the personal loan check list and verify that the supporting documentation is on the profile and that the customer’s meet the banks standards.
Once [redacted] is satisfied with the supporting documents and verified the application, then he would sign off on the back of the check list paper with his name, employee number, date and signs it then he would hand it back to [you] so [you] can scan it and send it off to the personal loan team for them to also do a security check on all the documentation and verify that the customer meets the banks criteria. Once the personal loan verification team was satisfied with the verification documents, then the personal loan would be ready to be funded into the customer’s selected bank account and the customer can withdraw the funds at any given time.”

(sic)

94 I also refer to exhibit 2 annexed to the affidavit, being a statement made by you on 11 October 2022. Such statement reads:

> "In the list below are the names and page numbers of the customers from the CBA which are in [your] case.
> In the list that are referenced below are page number of the briefing provided by Victorian Police, [he] will find that [your] previous Branch manager [redacted], Customer Service Manager [redacted] and replacement Branch Manager [redacted] had checked and signed off on to verify that the customer meets all banks policies and procedures that have been outlined in the personal loan checklist and also in the Commonwealth bank systems (Commsee). In any of these cases listed below, [your] managers failed to do their job and did not check nor ask for the right required documents so that the loan application could meet the banks requirements.
>
> 1. [redacted] 1763 / 1764 - [redacted]
> 2. [redacted] 1966 / 1967 - [redacted]
> 3. [redacted] 872 / 873 - [redacted]
> 4. [redacted] 2145 / 2146 - [redacted]
> 5. [redacted] 999 / 1000 - [redacted]
> 6. [redacted] 944 / 945 - [redacted]
> 7. [redacted] 1179 / 1180 - [redacted]
> 8. [redacted] 2615 / 2616 - [redacted]
> 9. [redacted] 2697 / 2698 - [redacted]
> 10. [redacted] 1811 / 1812 - [redacted]
> 11. [redacted] 1339 / 1340 - [redacted]
> 12. [redacted] 1875 / 1876 - [redacted]
> 13. [redacted] 1116 / 1117 - [redacted]
> 14. [redacted] 2199 / 2200 - [redacted]
> 15. [redacted] 1460 / 1461 - [redacted]
> 16. [redacted] 2797 / 2798 - [redacted]
> 17. [redacted] 1627 / 1628 - [redacted]
> 18. [redacted] 2747 / 2748 - [redacted]
> 19. [redacted] 2263 / 2264 - [redacted]
> 20. [redacted] 1057 / 1058 - [redacted]
> 21. [redacted] 1291 / 1292 - [redacted]
> 22. [redacted] 2085 / 2086 - [redacted]
> 23. [redacted] 763 / 764 - [redacted]
> 24. [redacted] 2400 / 2401 - [redacted]
> 25. [redacted] 1236 / 1237 - [redacted]
> 26. [redacted] 2313 / 2314 - [redacted]
> 27. [redacted] 1512 / 1513 - [redacted]
> 28. [redacted] 2546 / 2547 - [redacted]
> 29. [redacted] 2010 / 2011 - [redacted]
> 30. [redacted] 2470 / 2471 - [redacted]
> 31. [redacted] 1562 / 1563 - [redacted]
> 32. [redacted] 1392 - [redacted]
> 33. [redacted] 1717 / 1718
>
> **What did [redacted] do wrong / breaking the law?**
>
> [Your] Manager [redacted] had checked the personal loan applications of the customer's; [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted]

[redacted] and [redacted].

With each of a personal loan application, [your] manager [redacted] role is to verify and check if the customer has the correct documentation which is outlined in the personal loan checklist and also more information on the Commonwealth bank's system in personal loan policies and procedures.

[redacted] had failed to recognise the wrong Visa type of the customer's listed and just signed off on the applications.

[Your] manager [redacted] was directly related to [your] charges and involved in all of these matters and [you are] able to give precise details of how he was involved in these matters.

[redacted] was actively telling [you] that he didn't care what [you] did, that he would sign off anything even if it wasn't correct just to get more business for the bank.

[redacted] was extremely happy with the fact that [you were] bringing in more clients and getting personal loans approved and complying with his directions.

He encouraged [you] to see the brokers privately and not in the premises due to the fact that it will look bad for [you] because other workers and employees will think that [you're] doing something wrong and illegal.

It was obvious it was incorrect information and [redacted] was prepared to signed off on it which had missing documents and hidden information.

[You are] prepared to give sworn evidence against anyone who is mentioned in [your] case if necessary.

Section 3 - verification ([redacted] signs here) Proof of role for [redacted]

Documents accepted in branch must be verified, cited and signed off by the branch manager or CSM/second officer in charge prior to the loan being funded.

[You] confirm that the above loan information has been completed and verified; and supporting documents accepted in branch are held on file. Once signed off and funded the loan documents must be image the same day.

What did [redacted] [redacted] do wrong / breaking the law?

[Your] Customer Service Manager [redacted] had checked the personal loan applications of the customer [redacted].

With each of a personal loan application, [your] Customer Service Manager [redacted] role is to verify and check if the customer has the correct documentation which is outlined in the personal loan checklist and also more information on the Commonwealth bank's system in personal loan policies and procedures.

[redacted] had failed to recognise the wrong Visa type of the customer's listed and just signed off on the applications.

Section 3 - verification ([redacted] signs here) Proof of role for [redacted]

Documents accepted in branch must be verified, cited and signed off by the branch manager or CSM/second officer in charge prior to the loan being funded.
[You] confirm that the above loan information has been completed and verified; and supporting documents accepted in branch are held on file. Once signed off and funded the loan documents must be image the same day.

What did [redacted] do wrong / breaking the law?

[Your] replacement Branch Manager [redacted] had checked the personal loan applications of the customer's; [redacted].
With each of a personal loan application, [your] replacement manager [redacted] role is to verify and check if the customer has the correct documentation which is outlined in the personal loan checklist and also more information on the Commonwealth bank's system in personal loan policies and procedures.
[redacted] had failed to recognise the wrong Visa type of the customer's listed and just signed off on the applications.

Section 3 - verification ([redacted] signs here) Proof of role for [redacted]

Documents accepted in branch must be verified, cited and signed off by the branch manager or CSM/second officer in charge prior to the loan being funded.
[You] confirm that the above loan information has been completed and verified; and supporting documents accepted in branch are held on file. Once signed off and funded the loan documents must be image the same day.

Personal loan application steps

When a customer requests to get a personal loan, they are introduced to a Customer Service Specialist (CSS) to fill out the application via Commonwealth Bank system (Commsee).
The customer is brought in the office and the CSS then asks the customer the reason for their visit into the bank.
Once the CSS identifies the customer's need for a personal loan then the CSS goes and asks this available manager to come into the office and ask the customer some questions to determine whether they qualify for a personal loan or not.
Once the manager is satisfied with the customer's answers then the manager writes in the customer's profile that the customer had answered the questions in the right manner.
[Your] manager would ask questions like; what is the purpose for the loan, are you currently employed, is anyone forcing you to take this loan.
There are/were more questions but [you] don't remember at the moment.
Once [your] manager had put these comments in the customer's profile, [you'd] then proceed with the personal loan application.
Once the loan is approved a CSS then would print out the personal loan documents and hand over a few documents for the customer to sign and hand back to the CSS so that it could get scanned into the customer's profile for the personal's team and [your] manager can see and verify all the documentation that meets the banks criteria.
One of the documents are called personal loan check list.

> The personal loan check list is a document which the Commonwealth bank has put in place for staff to follow step by step so that the customer's meet the bank's criteria.
> Once the application is complete then the Customer Service Specialist would hand the application over to the available manager so that they can verify and check if all the supporting documentation is on the customer's profile which is scanned and signed by customer, staff and manager.
>
> [redacted] (branch manager at Commonwealth bank in [redacted]) Customer Service Manager [redacted] and replacement Branch Manager [redacted] role as a manager is to verify and check if all the documents that meets the banks criteria for example; Income & payslips, permanent residency, identification, refinancing documents and other bank documents which [you] may not remember at this time.
>
> Once [redacted], [redacted] and [redacted] were done with the first initial interview, [you] would then commence with the personal loan application and ask for the required documents like payslips, purpose of the loan, duration of their loan and other qualifying question for the loan.
>
> Once the loan was approved by the system (Commsee) then [you] would hand the application to [you] manager [redacted], [redacted] and [redacted] for them to go through the personal loan check list and verify that the supporting documentation is on the profile and that the customer's meet the banks standards.
> Once [redacted], [redacted] and [redacted] are satisfied with the supporting documents and verified the application, then he would sign off on the back of the check list paper with his name, employee number, date and signs it then he would hand it back to [you] so [you] can scan it and send it off to the personal loan team for them to also do a security check on all the documentation and verify that the customer meets the banks criteria.
> Once the personal loan verification team was satisfied with the verification documents, then the personal loan would be ready to be funded into the customer's selected bank account and the customer can withdraw the funds at any given time."

95 The informant was cross-examined on 14 July 2023, and gave evidence that he had made enquiries with the investigators at the Commonwealth Bank and that the investigation was about 70 per cent completed.

96 When the matter came back before the Court on 20 October 2023, there was a bundle of emails between the informant and the investigator at the bank, a Ms Alice Kennedy (see exhibit 5). The email from the investigator for the bank advised that the investigation had now been completed and there would be no further prosecution of any other people (including any people named by you in your various documents).

97 The ultimate position of counsel for the prosecution in relation to these issues were that:

(a) You should not be believed in respect of allegations that you were physically intimidated by any of the co-offenders, Sandasamy, Samiayya, and Kachiyappan. In particular, reference was made to the history given to the psychologist, Mr Bernard Healey, as to why such offending occurred, with no reference to any duress on you. Furthermore, the informant, in his affidavit, noted that, when interviewed by the bank investigators on 3 October 2019, you did not provide any information regarding other offenders to the investigators, and, furthermore, when interviewed by the Financial Crimes Squad investigators on 22 July 2021, you did not provide any information regarding other offenders.

(b) The informant also deposed, in his affidavit, that he had spoken to numerous witnesses that have dealt with the "brokers" and none of them indicated that they were threatened or intimidated by them.

(c) Furthermore, the informant deposed that he watched "numerous hours of CCTV footage of the CBA [redacted] Branch during [your] offending and [your] assertion that [you were] threatened and intimidated to commit these offences, in [his] opinion, is simply not true".

(d) It is to be noted that, the informant, in his affidavit, deposes that you stated to investigators that you personally made $20,000 from this offending – however the informant considered that the figure was "substantially more". In particular, he refers to one of the witnesses, [redacted] [redacted] (a recipient of one of the loans), who stated that he went direct to you for a loan of $35,000 and you attempted to obtain some money from him for his "fees" after work hours once [redacted] had received the loan amount. It is put by the informant in his affidavit that this would not fit with your assertion that you only did things through "brokers" who were threatening you;

(e) It was further submitted by counsel for the prosecution that the offer of assistance regarding alleged co-offenders provides "nothing over and above what the police already had". Furthermore, reference was made to the evidence of the informant when cross-examined, that it was his view that you had "researched the brief of evidence" for the names which are contained within the various statements by you. Furthermore, and in any event, counsel for the prosecution highlights that the evidence before the Court that there has been a completed investigation by the bank, which did not establish any evidence that any other offence was actually committed by any other person. Counsel for the prosecution ultimately submitted that there should be no discount for assistance to authorities in all the circumstances.

Ultimate disposition

98 Your counsel submitted that, "despite the serious offending", there should be a significant reduction in sentence due to the mitigating factors and your assistance to authorities. In this respect, it was submitted that consideration of a disposition involving a community correction order and "if necessary" combined with a sentence of imprisonment.

99 Your counsel also noted that, on his instructions, you received between $500 to $800 per loan, with a total of approximately $25,000, such amounts being paid by the three brokers, Sandasamy, Samiayya and Kachiyappan.

The position of the Prosecution on sentence

100 Counsel for the prosecution tendered the following documents on sentence:

(a) a document headed "Prosecution Submissions on Sentence", dated 15 May 2023 (exhibit 4);

(b) a document headed "Additional Prosecution Submissions on Sentence", dated 18 October 2023 (exhibit 4).

101 In general, counsel for the prosecution submitted that the following matters are relevant in determining an appropriate sentence:

- You breached the trust of your then employer, the Commonwealth Bank of Australia.
- A significant amount of money was involved – over $1 million. This was not isolated offending, but occurring over about seven months, with approximately forty-two separate events making up the two rolled-up charges.
- You have instructed your counsel that you received a financial benefit of about $500 to $800 per loan or credit card facility.
- No restitution has been made, or is likely to be made.

102 Furthermore, it was submitted that "general deterrence" is the most important sentencing factor in cases involving so-called "white collar" crime offences. It was further submitted that just punishment is also relevant. Reference was made to the decision of *Director of Public Prosecutions (DPP) v Bulfin,*[16] and, in particular, at page 131, where Charles JA stated:

> "The motivation to engage in conduct of the kind here under consideration may spring from many sources: a position of trust and the easy ability to abuse it; the enormous rewards that may be available; a position of high authority in some substantial enterprise and the offender's assumption that discovery or proof of wrongdoing can be avoided; greed or the burden of funding an extravagant lifestyle; weakness in succumbing to outside pressures to use deceitful means for business ends; and personal or corporate ambition, to name but a few. Whatever the motivation, offences of the kind here in question almost invariably involve a carefully calculated course of conduct over a long period, repeated deliberate acts of dishonesty, substantial amounts of money, and, frequently, losses (often tragic in their impact) to large numbers of small investors. The offender often holds a position making it possible, or has the ability, to disguise or camouflage the conduct in question. Detection is difficult, the investigation of the crime usually lengthy and very expensive, and the problems of trial and proof will frequently be extreme. ... The result of such considerations, in my view, is that the element of general deterrence will usually carry particular significance in sentencing for crimes such as the present, both in relation to the total effective

[16][1998] 4 VR 114

> sentence and the non-parole period; together with a requirement for strong denunciation by the sentencing court."
>
> For persons first contemplating corporate criminality, a sentence which requires an offender to spend a substantial term in actual custody by virtue of the non-parole period fixed, is, in my view, much more likely to focus their attention and have real deterrent impact than a longer head sentence, much of which is likely to be served on parole after the offender's release from custody. … ."

103 I also refer to the following cases which affirm the reasoning in *Bulfin*[17] to be still relevant: *Dyason v R*[18] and *Director of Public Prosecutions (DPP) (Cth) v Gregory*.[19]

104 Counsel for the prosecution submitted that, although the subject offending was less sophisticated than some other corporate frauds, general deterrence remains a significant factor. In this respect, she noted there clearly was some planning, there were multiple false entries made over a reasonable period of time and significant losses were involved. In particular, although you had no prior convictions, it was submitted that given your repeated acts of dishonesty were over a six-month period, specific deterrence also has a role to play.

105 When queried by the Court as to whether the losses suffered by the bank are relevant in determining an appropriate sentence, counsel for the prosecution referred to the Victorian Court of Appeal decision of *Mao v R*.[20] That matter involved an appeal against sentence by two applicants who obtained financial advantage by deception. Each of the applicants had pleaded guilty to eight charges of obtaining a financial advantage by deception – such charges relating to fraudulent loan applications made by them to various banks. As a result of their fraudulent applications, the applicants obtained eight loans, totalling in excess of $9 million.

[17] *Op cit*
[18] [2015] VSCA 120
[19] (2011) 34 VR 1 at paragraph [55]
[20] [2022] VSCA 211

106 Having pleaded guilty to three or more continuing criminal enterprise offences,[21] the applicants fell to be sentenced as continuing criminal enterprise offenders within the meaning of s6H(1) of the *Sentencing Act* 1991. As a result, the maximum term of imprisonment for each of the offences to which they pleaded guilty was twenty years. The first applicant was sentenced to an aggregate term of imprisonment of three years, with a non-parole period of eighteen months and, on the same day, the second applicant had been sentenced to an aggregate term of imprisonment of two years and four months, with a non-parole period of one year and two months. The Court of Appeal did dismiss the appeal in relation to each applicant.

107 In particular, counsel for the prosecution referred to paragraphs 28 and 29. I set out such paragraphs:

> "[28] The judge said that the present case shared some of *Bulfin's* features, and that some of the statements of principle in *Bulfin* applied to the sentencing of the applicants.
>
> [29] The judge referred to submissions made on behalf of the applicants that the banks were never at risk of losing their money because the applicants had substantial equity (around 20 per cent) in the properties they purchased; and their conduct 'was not speculative and this was a unique and exceptional aspect of the case that should lead to a substantial reduction in the need for general deterrence and denunciation'. The judge accepted that the loans were serviced and that the banks suffered no loss, but went on to say that general deterrence and denunciation remained sentencing principles of substantial importance. His Honour then said:
>
> > 'It must be that those who participate in offending such as this usually expect the venture to succeed and that their dishonesty will remain undetected. Success of the enterprise and the absence of loss cannot be elevated to become the primary sentencing consideration or be allowed to unduly erode the importance of general deterrence.
> >
> > For the integrity of the system, it is obvious that those who might be tempted to obtain substantial financial advantages from banks through fraudulent misrepresentations be deterred from doing so. A belief in the ability to service the loan, even if such a belief is proven to be accurate, is somewhat beside the point. The assessment of the borrower's capacity to repay

[21] See s6H(1) and Schedule 1A of the *Sentencing Act* 1991

> the loan is a matter for the lender, based on honest information.
>
> That said, I accept the absence of loss and the low risk of default is a matter of significance which reduces the objective gravity of the offending.'"
>
> (Footnotes omitted.)

108 At paragraph 48, the Court of Appeal, consisting of Beach and T Forrest JJA, stated:

> "Proposed ground 2 is also without substance. There was no error in the judge concluding that Ms Mao's criminality and moral culpability were significant, notwithstanding that none of the banks suffered any loss and Ms Mao both cooperated and encouraged Mr Niu to assist the authorities following the detection of her offending. As the respondent correctly submitted, Ms Mao's offending was protracted; a total of in excess of $9 million was obtained by way of the scheme in which she participated; the offending was planned and systemic; and the frauds perpetrated by the applicants were designed to gain them substantial wealth."

109 It was ultimately submitted that, on the basis of *Mao v R*,[22] that it must follow that losses to the bank would increase the objective gravity of the offending.

110 Although the fundamental submission on behalf of the prosecution in relation to the issue of you giving assistance to the authorities was that nothing you provided was "over and above than what the police already had". In particular, it was submitted that there should be "no discount for assistance to authorities".

111 It was common ground between the parties that the relevant legal principles governing the "discount on sentence" for an offender who co-operates with authorities is set out in *Haamid (A Pseudonym) v R*.[23] I refer to paragraph 24 of that decision, whereat the Court of Appeal (consisting of Kyrou, Niall and Weinberg JJA) stated:

> "The principles governing the discount on sentence for an offender who cooperates with the authorities are well known.[24] It is not necessary for us to restate them. For the purposes of the current application, it suffices to refer to the following:

[22] *Op cit*

[23] [2018] VSCA 330

[24] The Court of Appeal, although noting that the term "discount" is commonly used, in the context of the instinctive synthesis, the recognition given to an offender's cooperation with the authorities should be seen as a "moderating factor" to be taken into account with all other relevant sentencing considerations – reference was made to *Ooi v R* [2018] VSCA 78 at paragraph [55].

(a) There is no set 'tariff' or standard discount to be provided for cooperation.[25]

(b) Factors relevant to the determination of the discount to be provided include:

(i) the quality and reliability of the information provided by the offender and its value to law enforcement authorities;[26]

(ii) whether the offender fully and frankly discloses all relevant information of which he or she is aware;[27]

(iii) whether, in addition to providing information, the offender has undertaken to continue to provide assistance and to give evidence against other offenders;[28]

(iv) the nature and gravity of the offences disclosed by the information provided by the offender and the number of people implicated;[29]

(v) the nature of the offender's involvement in the offending in respect of which he or she provides information and his or her moral culpability;[30]

(vi) the extent to which the offender and his or her family are exposed to the risk of harm as a result of the offender's cooperation;[31] and

(vii) whether the offender's cooperation has already achieved positive law enforcement outcomes, such as recovery of stolen or dangerous goods, the interception of a shipment of illicit drugs, the prevention of an act of terrorism or the arrest or conviction of offenders.[32]

(c) The offender is entitled to a discount even if his or her motive is self-interest. However, if the motive is remorse, contrition, acceptance of responsibility or rehabilitation, a greater discount may be warranted based on the application of normal sentencing principles.

(d) The discount to be provided to a 'true informer' may be as high as 66 per cent.[33] An example of a 'true informer' is a person who is a member of an organised crime syndicate who provides information against other members of the syndicate in circumstances where his

[25]Reference was made to *R v Cartwright (*1989) 17 NSWLR 243, 255-256; *R v Johnston* (2008) 186 A Crim R 345, 350-351, paragraphs [18] and [21]; *DPP v Cooper* [2018] VSCA 21 at paragraph [45]; *Ooi v R* (*op cit*) at paragraph [54].

[26]Reference was made to *R v Johnston* (*op cit*) at paragraph [18] and *Collins (a Pseudonym) v R* [2018] VSCA 131 at paragraph [23]

[27]Reference was made to *R v Su*, *Katsuno, Asami and Honda* [1997] 1 VR 1 at 79; *R v Golding & Golding* (1980) 24 SASR 161 at 173

[28]Reference was made to *DPP v Cooper* (*op cit*) at paragraph [45]

[29]Reference was made to *R v Johnston* (*op cit*) at paragraph [18]

[30]Reference was made to *R v Johnston* (*op cit*) at paragraph [18]

[31]Reference was made to *R v Cartwright* (*op cit*) at 255; *DPP v Cooper* (*op cit*) at paragraph [45] and *Collins (a Pseudonym) v R* (*op cit*) at paragraph [24]

[32]Reference was made to *R v Golding & Golding* (*op cit*) at 173

[33]Reference was made to *Cottee v R* [2010] VSCA 285 at paragraph [23] and *DPP v Cooper* (*op cit*) at paragraph [43]

or her personal safety, and that of members of his or her family, is placed at grave risk.

(e) There are a number of cases in which a discount of 50 per cent has been provided.[34]

(f) The magnitude of any discount provided is not always apparent. Unlike the discount for a plea of guilty which must be quantified under s 6AAA of the *Sentencing Act 1991*, s 5(2AC) of that Act provides that a sentencing court need not quantify any discount provided for cooperation.

(g) As long as the offender provides genuine cooperation, the fact that, for reasons unconnected to the offender, the cooperation is ultimately not required to achieve a law enforcement outcome does not disentitle him or her to a discount.[35] An example is where the offender undertakes to give evidence against a co-offender but is not required to do so because the co-offender decides to plead guilty.[36]

(h) The discount allowed for cooperation will necessarily affect both the head sentence and the non-parole period.[37]

The Court will give considerable weight to any assessment in a letter of assistance in relation to matters such as the value of the offender's assistance and the degree of risk to his or her safety. However, the Court will make its own assessment of these matters."

112 I should point out that your counsel made plain that, he was not only relying on the common law principles relevant to an offender assisting authorities, but also relied on s5(2AC) of the *Sentencing Act* 1991 and, in this respect, I refer to ss(2AB) and ss(2AC) of s5 of the *Sentencing Act* 1991, which reads:

"(2AB) If, in sentencing an offender, a court imposes a less severe sentence than it would otherwise have imposed because of an undertaking given by the offender to assist, after sentencing, law enforcement authorities in the investigation or prosecution of an offence, the court must announce that it is doing so and cause to be noted in the records of the court the fact that the undertaking was given and its details.

(2AC) Nothing in subsection (2AB) requires a court to state the sentence that it would have imposed but for the undertaking that was given."

[34]Reference was made to *R v Johnston* (*op cit*) at paragraph [20]
[35]Reference was made to *R v Cartwright* (*op cit*) at [252]; *R v Freeman* (2001) 120 A Crim R 398, 405 at [37]; *Director of Public Prosecutions (DPP) v Nazari* [2010] VSCA 293 at paragraphs [31]-[32]; *Cottee v R* (*op cit*) at paragraph [24]
[36]Reference was made to *R v Cartwright* (*op cit*) at 253 and *R v Freeman* (*op cit*) at [37]
[37]Reference was made to *R v Duncan* [1998] 3 VR 208, 214-215

113 In paragraph 27 of the decision of *Haamid (A Pseudonym*) v R,[38] the court further stated:

> "Section 5(2AB) promotes the public policy that offenders should be encouraged to provided information and other forms of assistance to law enforcement authorities to help them bring other offenders to justice."[39]

Conclusion

114 You have pleaded guilty to two rolled-up charges of dishonestly obtaining, for other persons, a financial advantage. Charge 1 involves you dishonestly obtaining credit-card facilities in the sum of $53,000 in relation to seven Commonwealth Bank customers and Charge 2 involves you dishonestly obtained personal loans in the sum of $991,250 for thirty-five Commonwealth bank customers. Such offending is serious offending, as is made clear by the maximum penalty of ten years' imprisonment relative to each charge.

115 Such offending occurred over a period of approximately seven months from 7 February 2019 to 23 September 2019 and only came to an end when your dishonest activities were detected by your employer, after which you were terminated on 13 December 2019.

116 At the time of the offending, you were twenty-five years old and had commenced employment at the [redacted] branch of the Commonwealth Bank in 2014. In about 2016, you were promoted to the role of customer service specialist – that is, taking care of customer needs, new accounts, credit cards and loan applications.

117 The policy of the bank was that customers eligible for personal loans and/or credit-card facilities must be registered in Australia and be either an Australian citizen or resident (permanent visa subclass holder), a New Zealand citizen, or a relevant non-resident visa holder. If a person becomes a permanent resident,

[38](*op cit*)

[39]Reference was made to *McGookin & Robinson v R* (1986) 20 A Crim R 438 at 449; *R v Su*, *Katsuno, Asami and Honda* (*op cit*) at [77]; *R v Cartwight* (*op cit*) at [252] and *Collins (a Pseudonym) v R (op cit)* at paragraph [25]

their correct visa must be sighted and an image copied to their profile. Ineligible visa types included bridging visas, student visas, safe-haven visas and graduate visas.

118 You were a member of a syndicate that organised personal loans and credit-card facilities to customers that were ineligible due to their non-resident visa status – most customers were primarily Malaysian nationals on bridging visas.

119 Your co-offenders, Sandasamy, Samiayya and Kachiyappan, acted as brokers for their customers and introduced those customers to you at the bank. You fraudulently altered the customer profiles of those people to state that they were permanent residents of Australia, so they were able to obtain personal loans and/or credit-card facilities.

120 It is also to be noted that, although some of these credit-card facilities and loans were honoured by the recipients of such benefits, the bank suffered losses amounting to $602,921.89 by way of unpaid and written-off loans and credit-card debts. All this would not have occurred if bank policy had been adhered to by you.

121 I have formed the view that the primary motive for you engaging in such dishonest acts was financial gain. In this respect, the evidence is not clear as to the precise amount that you did gain – according to the affidavit of the informant, you stated to investigators you personally made "$20,000" from the offending; you instructed your counsel that you received "between $500 and $800 per loan with a total of approximately $25,000 … paid in cash by three brokers".

122 However, the informant has given sworn evidence that he considers it is highly likely you earned more than the stated amounts, and, indeed, also refers to the investigation involving one of the recipients of a credit-card facility and loan – [redacted] – who asserted that you approached him directly for money to obtain various facilities.

123 Again, there is no evidence in your bank records of money being paid in, but it was noted by investigators that a forensic accountant was not able to identify money paid in to either of your two personal NAB bank accounts by the co-offenders, or any of the identified customers. However, it was also noted that the amount of cash withdrawals from your accounts was substantially less during the period of offending than either pre or post offending.

124 I consider that your moral culpability in this matter is high. In this respect, I do note that you have asserted that you were intimidated both verbally and physically by Sandasamy, Samiayya and Kachiyappan. These allegations were made in the following documents:

(a) in your statement, dated 5 August 2022 (exhibit 1);

(b) generally, in the history given by you to the psychiatrist, Dr Sullivan, who assessed you on 2 May 2023;

(c) when assessed for a community correction order, you informed the Correction Officer on 17 July 2023 that you had been:

> "… blackmailed into providing loans for an individuals clients that were not meeting the criteria of the Commonwealth Banks policy.";
>
> (sic)

125 Although no submissions were made by your counsel in relation to the relevance of this allegation, seemingly, if such allegations were accepted, it would have the potential to reduce your moral culpability – that is to say, it is a mitigatory factor.

126 However, after considering all of the evidence, I am not persuaded, as a matter of probability, that you were intimidated in the way that you allege. In particular, I refer to the report of the psychologist, Mr Healey, who initially assessed you on 7 May 2022, over a period of three-and-a-half hours. At that time, when queried about your offending, you gave a history that you were endeavouring to help clients concerned to secure a sound start in their lives in a new country, with

much empathy for them, particularly in view of the trials and tribulations suffered by you and your family in their efforts, over two years, to secure freedom in Australia. Furthermore, you stated you were pressured at the time by your superiors to secure a high level of customers in order to gain promotion and, at the same time, were being pressured by your girlfriend, who held a senior government position. You also saw Mr Healey for a second time in April 2023 and, according to his last report, contacted him about six times by telephone over a period of time. At no time did you make any reference to pressure or intimidation by Sandasamy, Samiayaa and Kachiyappan.

127 Furthermore, as noted by the informant, you make no mention of such allegations when initially interviewed by the bank on 3 October 2019, nor was any information given about such events when interviewed by the Financial Crime Squad Investigators on 22 July 2021. I also note that the informant has deposed that he has spoken to numerous witnesses that have dealt with the "brokers" and none of them indicated that they were threatened or intimidated by them.

128 The informant also deposed he watched "numerous hours of CCTV footage of the CBA [redacted] Branch during [your] offending and [your] assertion that [you were] threatened and intimidated to commit these offences", and came to the view that such allegation was "simply not true".

129 I have also formed the view that such offending is objectively serious, given the nature of such offending, the amount of time over which it occurred, the amount of money involved and the amount of money lost by the bank. In this sense, although the planning was not that sophisticated, it clearly involved active participation on your part over the period of time of the offending, well knowing that your activities were clearly in breach of bank policy. In this sense, I accept the submissions of counsel for the prosecution, that you breached the trust of your employer, the Commonwealth Bank of Australia, over that period of nearly

seven months, and that a significant amount of money was involved – being over $1 million.

130 I do accept, consistent with my earlier comments, that the following matters are relevant in relation to mitigation of your sentence:

(a) your early plea of guilty, which had utilitarian value and also attracted a further discount as a result of the decision in *Worboyes v R*;[40]

(b) that you have experienced remorse in relation to your offending;

(c) you have no prior, nor, indeed, subsequent convictions for any criminal activity;

(d) that you are capable of reform and rehabilitation and your prospects for rehabilitation are good, which have been demonstrated by your ongoing present employment;

(e) that so-called Principle 5 of *Verdins* is enlivened, in that you have impaired mental functioning at the date of sentencing, which may mean that a sentence of imprisonment may weigh more heavily on you than it would on a person in normal health;

(f) the issue of delay, involving both the first limb concerning unfairness to you, and the second limb, involving the progress you have made towards rehabilitation.

131 As already recorded, your counsel has submitted that you are entitled to a "discount" in respect of you giving assistance to the authorities. Perhaps, more correctly, it should be referred to as you giving assistance to the authorities is a "moderating factor" to be taken into account with other relevant sentencing considerations. After a careful consideration of the evidence, I do not consider

[40] *Op cit*

that any discount should apply in moderating your sentence. I have come to such conclusion for the following reasons:

(a) In the circumstances of this matter, all allegations that you have made in relation to others being complicit in the subject offending have been made available through police authorities to those who were making the investigation on behalf of your prior employer, the Commonwealth Bank. At the last mention date, the evidence established that such investigation had been completed by the bank and that there were no other people who would be charged with related offending. Accordingly, the vast number of people who you have nominated as being complicit have not been charged with any offending. The circumstances of this matter are not what sometimes occurs when a person is willing to give information but is never called upon, because the person they implicate in any given activity pleads guilty, and the evidence of the person is not required;

(b) Although you clearly implicated the "brokers", Sandasamy, Samiayya and Kachiyappan, the authorities were aware of their complicity, but the first two could not be arrested as they fled overseas, and the third, Kachiyappan, was arrested, but ultimately not charged due to insufficient evidence;

(c) Your allegations as to who was implicated in the offending was wide reaching, alleging a large number of people. Indeed, at first blush, it appeared to be anyone who was working in anything to do with the granting of loans or credit-card facilities would be implicated, in that they were not appropriately performing their tasks – rather than any direct evidence of people performing illegal acts.

132 Initially, I was minded that the purpose of such exercise on your part was wholly self-serving, to hopefully dilute your criminality, and obviously to reduce your sentence. Of course, if I took such a view, such would most likely amount to an aggravating factor, which would require me to be satisfied beyond reasonable

doubt. I am not prepared to make that finding and only find, as I have stated, that I am not satisfied, as a matter of probability, that making available to the authorities and police the details you have, have been of assistance to the authorities. I am also conscious of the evidence of the informant, who considers that the people named by you would have been obtained from police records, as to who was going to be interviewed in relation to these matters.

133 For completeness, the Court directed that you be assessed for a community correction order. This was undertaken on 17 July 2023. At that time, the Corrections Officer, Ms Monique Dicesare, assessed you as being a "low risk of re-offending according to the Level of Service Risk Assessment Tool". You gave a history to her of strong family support and, as already recorded, asserted that you were "blackmailed" into providing loans for individual clients not meeting the criteria of the Commonwealth Bank policy. You were deemed a suitable candidate for a community correction order and, beyond the normal conditions, that there be special conditions involving treatment and rehabilitation involving mental health and supervision.

Disposition

134 Consistent with the dicta in *Bulfin*,[41] I consider the most important matter in determining an appropriate sentence is general deterrence and strong denunciation of this type of offending. Although I appreciate that you have no prior convictions, would appear to be quite remorseful, and, indeed, have suffered some psychological consequences as a result of the delay in this matter, it is very important that people be generally deterred from committing what is colloquially known as "white-collar crime", due, in part, because of, more often than not, the difficulty in detecting such crimes.

[41] *Op cit*

135 As I have also pointed out in the circumstances of this matter, the objective seriousness is high, in part, because of the losses suffered by the bank as one of the consequences of your fraudulent activities.

136 Although the offending did occur over a period of about seven months, it is one continuum and I do not consider that specific deterrence plays any significant role, given your expression of remorse for such offending, and, indeed, what would appear to be a trouble-free existence since the subject offending.

137 I intend to convict you of each rolled-up charge and sentence you to a period of imprisonment with a non-parole period. I do differentiate between the two charges which, although essentially involving the same offending – the falsification of documentation – the first charge involves far less people and, indeed, far less funds than that of the second charge.

138 Please be upstanding:

(a) in relation to Charge 1, you are convicted and sentenced to six months' imprisonment;

(b) in relation to Charge 2, you are convicted and sentenced to three years' imprisonment;

(c) I direct that three months of the sentence imposed in relation to Charge 1 be served cumulatively with the sentence imposed upon Charge 2;

(d) the total effective sentence is three years' and three months' imprisonment and I direct that the minimum term to be served before being eligible for parole be two years' and two months' imprisonment;

(e) I declare that, in the absence of your pleas of guilty, I would have sentenced you to four years and four months' imprisonment pursuant to s6AAA of the *Sentencing Act* 1991.

(f) ---